IN THE HIGH COURT OF JUDICATAURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Commercial Taxes Officer, Works & Leasing Tax, Udaipur **vs.** M/s J.K.Brs.,Rawtbhata

S.B.Civil Sales Tax Revision Petition No.989/2001 against the judgment of the Rajasthan Tax Board, Ajmer dated 9.2.2001 passed in Appeal No.622/97/Udaipur-C.T.O. vs. M/s J.K. Bros.

Date of Judgment: October 12, 2006.

PRESENT.
HON'BLE MR. PRAKASH TATIA, J.

Mr. Sangeet Lodha for the petitioner.
Mr. Niraj Jain for the respondent.

BY THE COURT:

REPORTABLE

This revision petition is against the order of the Rajasthan Tax Board, Ajmer dated 9.2.2001 by which the Tax Board dismissed the appeal preferred by the revenue against the order dated 20.12.1996 passed by the Deputy Commissioner(Appeals), Udaipur.

Brief facts of the case are that the respondent entered into contract of construction with the Rajasthan Atomic Power Station, Rawatbhata and obtained works order dated 15.11.1986. During the assessment year 1987-88, the respondent received a sum of Rs.39,47,609/-. The respondent was liable to payment of sales tax on

the transfer of goods used in the execution of the works contract. However, instead of paying the tax, as aforesaid, the assessee contractor opted for payment for exemption fee @ 3% which was allowable w.e.f. 28.5.1987. The assessee-respondent deposited a sum of Rs.42,682/- towards the exemption fee but did not deposit remaining amount due to the tune of Rs.76,646/-. It is also alleged that a sum of Rs.13,090/-was deposited with delay.

The assessment order was passed on 27.11.1993. Besides exemption fee of Rs.76,646/-, the liability of tax was assessed by the assessing authority as Rs.1,00,636/- and penalty of Rs.500/- under Section 16(1) of the Rajasthan Sales Tax Act, 1954 was imposed and accordingly, a demand of Rs.1,77,782/- was created against the assessee-respondent dealer. The assessee respondent submitted an application under Section 17 of the Rajasthan Sales Tax Act, 1954 for rectification of assessment order stating in the application that a sum of Rs.10,01,826/- was received by it from the awarder of the contractor prior to 28.5.87 and since the provisions with regard to the exemption fee has come into force w.e.f. 28.5.1987, therefore, on the aforesaid amount, no liability of exemption fee can be imposed. The assessing authority accepted the contention of the respondent-dealer and rectified the assessment order vide order dated 24.2.1994. Accordingly, the demand was reduced from Rs. 1,77,782/- to Rs.1,08,656/- vide

order dated 24.3.1994.

Being aggrieved against the aforesaid order dated 27.11.1993, the respondent also preferred appeal before the Deputy Commissioner (Appeals), Udaipur which was partly allowed by the appellate authority vide order dated 20.12.1996 and the interest levied by the assessing authority on delayed deposit of exemption fee was set aside.

Aggrieved against the order dated 20.12.1996 of the appellate authority, the revenue preferred appeal before the Rajasthan Tax Board, Ajmer and that appeal too was dismissed by order dated 9.2.2001. Following questions of law are involved in this revision:-

> "(1) Whether interest can be levied on amount of fee, also as leviable on amount of tax, interest and penalty under sub-section(2) of Section 11 B of the Rajasthan Sales Tax Act, 1954 ?
>
> (2) Whether the contractor is liable to pay the interest under rule 46(2)(c) in case where the awarder has not deducted and deposited the tax?"

Sub-section (2) of Section 11B is as under:-

> "(2) Where any amount of tax, fee, interest or penalty is demanded from a dealer as a result of an order passed in any proceedings under this Act (including assessment, appeal, revision, rectification or otherwise) and such tax, interest or penalty is not paid by such dealer within the time required by or under the provisions of this Act, he shall be liable to pay interest at the rate of (two

> per cent) per month on the amount of tax or interest or penalty from the date of expiry of such time until the date of payment of such amount."

It is clear from the starting line of the said section that it provides for levy of interest in case the amount as specified in said provisions is not paid in time. In opening line, it is mentioned that "any amount of tax, fee, interest or penalty", whereas in the subsequent line where the words were repeated in the same section as "and such tax, interest or penalty is not paid by such dealer within the time required by or under the provisions of this Act, he shall be liable to pay interest at the rate of two percent per month.....". It appears that the Tax Board noticing absence of word "fee" in next lines of the same section, held that the interest can be charged on the amount of tax, interest or penalty and not on fee.

The provisions of law are required to be construed harmoniously. The complete reading of sub-section (2) of Section 11B makes it clear that the provision has been made to cover tax, fee, interest and penalty amount and to impose the liability of interest over the all amounts of tax, fee, interest or penalty whatever that may be. In subsequent para of the same section, it is mentioned "and such" before "tax, interest or penalty". The word "such" covers the component mentioned in the operative line of the sub-section (2) of Section 11B.

The Tax Board, therefore, committed error of law in holding that no interest is payable on delayed payment of “fee”. The question no.1 is, therefore, decided in favour of the revenue.

Rule 46 provides how the tax is to be paid. Rule 1A of Rule 46 of the Rajasthan Sales Tax Act, 1954 provides that where any contractor enters into a contract with any awarder for transfer of the property in the goods in the course of execution of works contract, and the gross value exceeds rupees five lacs, the awarder shall, within one month of the making of the contract, furnish to the assessing authority of the contractor particulars of the contract in the Form ST 47. Sub-rule (2) of Rule 46 provides that in a works contract, the awarder is being a department of any Govt., a Corporation, a Govt. Undertaking, a Cooperative Society, a local body, a trust or a private or public limited company, having responsibility for paying any sum to a contractor for carrying out any works, shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof shall deduct an amount equal to three percent of such sum towards tax. Proviso to sub-rule (2)(b) of Rule 46 provides that the awarder of a contract shall after deducting the tax under clause (2)(a) shall deposit the said tax in Form ST-10.

Clause (c) of sub-rule (2) of Rule 46 provides that if the tax is not deducted from the bill as provided in clause (a) of sub-rule (2) of Rule

46, the awarder shall be liable to pay penalty as provided in the Act. The same clause (c) further provides that in such situation the contractor shall be liable to pay the said tax together with interest at the rate specified in the Act from the date of the receipt of the payment by him. In addition to above, there is a sub-section (3)(a) under Rule 46 which provides that where the awarder does not fall in any of the categories mentioned in clause (a) of sub-rule (2), the contractor shall deposit the tax at the notified rate in Form ST 10 on the amount he receives, within a period of 15 days of the date of receipt of such payment.

According to the learned counsel for the respondent-assessee, the Tax Board rightly held that in a case where tax is deducted under clause (1) of sub-rule (2) of Rule 46 and has not been deposited by the awarder then the awarder is liable to pay the penalty. It is also submitted that in this case, the awarder has deducted the tax and, therefore, sub-clause (c) of sub-rule (2) under Rule 46 cannot be applied. It is also submitted that at the most it is a case of default of the awarder and not of the contractor.

The argument advanced by the learned counsel for the respondent proceeded on assumption that the case of the assessee was that the awarder deducted the amount but not deposited the tax, whereas, it is clear from the order dated 27.11.1993 passed by the

assessing authority that the awarder deducted only amount, (1) Rs.15,861/- on 8.9.1987, (2) Rs.7,486/- on 7.11.1987, (3) Rs. 6,245/- on 7.11.1987 and Rs.13,090/- on 17.10.1991. The assessee himself submitted Form ST 45 for above deduction by the awarder and the assessing authority gave due credit of that amount. Therefore, the assessee himself before the assessing authority disclosed that the assessee received Rs.10,01,826/- from the awarder before 28.5.1987 and over it the awarder has not deducted the tax amount. This plea of assessee was accepted by the assessing authority which is clear from the assessing authority's order dated 24.3.1994. It appears from the orders of the assessing authority or the Deputy Commissioner(Appeals) or the Tax Board, Ajmer that it was never contended by the assessee that the awarder deducted the tax or fee amount and did not deposit. Sub-clause © of sub-rule (2) of Rule 46 clerarly provides that if the tax is not deducted by the awarder then the awarder is liable to pay penalty but so far as tax and interest are concerned that shall be liability of the contractor. Therefore, the contractor was liable for the tax and the interest and in the present case, the assessee failed to deposit the exemption fee of Rs.7,664/- and Rs.13,090/- even upto date of passing of assessment order. The amount of the exemption fee was deposited by the contractor himself and not by the awarder after deducting the tax amount from the due amount of the contractor. The scheme of the rules

1A and under various clauses of sub-rule (2) of Rule 46 make it clear that the responsibility to pay the tax amount is of the contractor and the mode has been developed for payment of the tax of the contractor through its principal or awarder. In view of the above facts, where fee amount has been paid after delay by the contractor cannot escape its liability to pay the tax and interest.

In view of the above this revision petition deserves to be allowed and hence allowed and the order of the Tax Board dated 9.2.2001 as well as the order of the Deputy Commissioner(Appeals), Udaipur dated 20.12.1996 are set aside and the order of the assessing authority is restored.

The learned counsel for the respondent, however, pointed out that the respondent has already submitted an application in amnesty scheme for availing certain benefits after withdrawing S.B.Civil Writ Petition No.3694/1999. If it is so, then this order will not come in the way of the assessee and if he is entitled to any benefit, the same may not be denied because of allowing of this revision petition by this order.

(PRAKASH TATIA),J.

mlt.